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3/7/98

In re Application of:  
Hogendijk, Michael :  
Serial No.: 10/772,840 :  
Filed: December 30, 1999 :  
Docket: 31530-01050 :  
Title: RIBBON-TYPE VASCULAR  
PROSTHESIS HAVING STRESS-  
RELIEVING ARTICULATION AND  
METHODS OF USE :  
Decision on Petition to  
Reissue the Outstanding Office  
Action and Reset a Period of  
Reply

This is a decision on the petition filed Mar. 5, 2008 requesting the holding of abandonment be withdrawn. This petition is being considered pursuant to 37 CFR § 1.181. No fee is required.

The petition is Granted.

The application was held abandoned for failure to timely and properly reply to the Office action mailed Oct. 18, 2007. The Office action set a three (3) month period for reply. No response was received and no extensions of time under 37 CFR § 1.36(a) were requested. It is noted the notice of abandonment has not been mailed. The application is technically abandoned for failure to respond to the Office action.

Facts in the Record and Facts Presented by Petitioners

- 1) On Oct. 18, 2007, the examiner issued a final Office action to the address of record. There does not appear to be any abnormality in the mail service. No mail was returned by the U.S. Post Office.
- 2) On or about Feb. 22, 2008, the applicant's attorney learned from the PTO's Private Pair system that an outstanding Office action of Oct. 18, 2007 was due.
- 3) On Mar. 5, 2008, the applicants' attorney filed the present petition to request to re-mail the Office action of Oct. 18, 2007 and reset a period of reply was filed.

### Discussion and Analysis

#### **Relevant section of the MPEP § 711.03 (C) (1)(A) states:**

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions). Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment.

In support of this petition, the petitioner has supplied a statement attesting that a search of the file and docket recording system indicates that no office action has been received. The petitioner has also supplied a copy of the docket records of Due Date report for Jan. 2008, Action Due printout and Docket Record of the application.

The petitioner has provided sufficient evidence to show non-receipt of the Office action mailed on Oct. 18, 2007. The petitioner has stated the communication was not received, and attested to the fact that a search of the file and docket records indicates the Office communication was not received. Additionally, copies of the relevant docket records have been attached and referenced in the petition and attached affidavits.

### Conclusion

Since the petitioner has met all the requirements set forth by M.P.E.P. § 711.03(c)(1)(A), the petition is hereby granted. The holding of abandonment is withdrawn. The Office action of Oct. 18, 2007 will be re-mailed. This application is being forwarded to the examiner in Art Unit 3773 for appropriate action. Any inquiry regarding this decision should be directed to Henry Yuen, Special Programs Examiner at (571)-272-4856.

PETITION GRANTED



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Frederick R. Schmidt, Director  
Technology Center 3700